Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 89-494

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

In Re:
GERALD SPARKS - - - - - Petitioner

versus

CHARACTER AND FITNESS
COMMITTEE - - - - - - - Respondent

PETITION FOR WRIT OF MANDAMUS AND OR WRIT OF PROHIBITION TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

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80 pp

QUESTIONS PRESENTED

I. Why did the U.S. Court of Appeals, 6th Circuit, fail to apply Supreme Court Case Law to this case thereby violating Appellant's 5th, 6th, 8th and 14th amendment rights when:

1. Petitioner was *never afforded notice of a hearing, nor was he ever given a due process hearing* following his interview and subsequent rejection by the one-man Character and Fitness Committee (CFC).
2. The Petitioner was permitted to *study, prepare* and *pay his fee* to take the bar examination on *four separate occasions,* unaware of a "blackball" letter in his folder dating back to the 5-minute CFC interview of 1/28/80. And *before* he took any exam!
3. Petitioner should have been informed of and given a copy of the letter issued by the CFC prohibiting him from ever being admitted to the Kentucky Bar.
4. No procedural or substantive due process was provided to Petitioner.
5. The CFC interview should not provide one man with the legal right, after a 5-minute interview, to blackball an applicant without providing him with substantive and procedural due process.

II. How can the *Immunity Defense* apply to the CFC?

It is an administrative rather than a judicial function, and why was a new Kentucky Supreme Court rule written regarding immunity *after* suit was filed by Petitioner?

How can the one-man Character and Fitness Committee, *a lawyer,* and the Chairman of the CFC, *a lawyer* by the name of Tommy Bell have immunity from civil liability when:

a. U.S. Congressmen do not have immunity from civil liability! (Only when they are in Congress exercising the speech and debate clause does any immunity exist.)

b. Presidential Aids do not have any immunity from civil liability.

c. Judges don't have immunity from civil liability when they exercise administrative function. Hiring, firing, interviewing people are purely administrative functions.

d. The American Medical Association doesn't have immunity from civil liability.

e. The National Bar Association and the Kentucky Bar Association doesn't have any immunity from civil liability.

f. No man is supposed to be above the law. How can Tommy Bell, a lawyer and the chairman of the CFC have immunity when he told the Petitioner, "we have always intended to take your money for the bar exam but we have never intended to pass you." Aren't the people who administered the Kentucky Bar Exam under a legal duty to conduct a fair and impartial exam?

Isn't it true that under the U.S. Constitution every man has a fair and equal opportunity in this country? Why wasn't the Petitioner afforded a fair and equal opportunity to earn a living of his choice? Why wasn't he afforded the opportunity of becoming a lawyer?

III. Is the One-Man CFC *Above the Law?* Is the Chairman of the CFC *Above the Law?*

IV. *Why* didn't the three Judge panel at the 6th Circuit follow *Forrester* v. *White,* 484 U.S. __ (1988) as in-

structed and mandated to do by the U.S. Supreme Court? This case was before the U.S. Supreme Court, during the October 1987 term. Petitioner received 8-0 vote in his favor from this court. The Character and Fitness Committee, has *no immunity* for black-balling prospective bar applicants *before* they take any exam, when they place a letter in applicants file not to pass the Petitioner.

V. This case should be considered to be a *landmark* case. Does a *mere lawyer* have immunity from civil liability when it can be proven he black-balled a prospective bar applicant by placing a letter in his file, *before* the applicant took any bar exam? Why is Beaver, the one-man committee, the man who placed the letter in petitioner's folder, now selling waterbeds instead of practicing law?

VI. Why does the three Judge panel keep insisting that the chief Justice of Kentucky Supreme Court, was sued, when in fact he was not named in the complaint?

VII. Why would the U.S. 6th Circuit write an *unpublished* opinion after they received instruction from the U.S. Supreme Court to follow *Forrester* v, *White?* Could it be they did not want the public and the U.S. Supreme Court to know what they had done when they did not follow *Forrester* v. *White?*

VIII. Petitioner is asking the U.S. Supreme Court to declare the *new* 1989 Bar Application *unconstitutional!* This new bar application is a direct result of Petitioner's suit against the Character and Fitness Committee! The new application *does not provide for any due process!* They are now asking the *new* bar applicants to *waive* their right to sue the Character and Fitness Committee, and they are asking the new bar

applicants to *waive* their basic Constitutional Rights namely notice of a hearing and a due process hearing as required by U.S. Supreme Court case law and under the 5th, 6th, and 14th Amendment. Today, they are still blackballing Bar Applicants! What they were doing with a 5-minute interview and a one-man Committee, they are now doing with a *new* bar application! They are still trying to blackball and control who is admitted to the Kentucky Bar. Copy of new Bar Application is in the Appendix hereto.

Can you believe in 1989, they are still blackballing applicants on the Kentucky Bar Exam? How can a 5-minute interview, be more important than the knowledge the Petitioner has acquired through hard work and study? Isn't a man's mind a horrible commodity to waste?

Why would the Respondents abolish the 5-minute Interview, and write a new bar application *after* they were sued by the Petitioner? Aren't they still attempting to blackball applicants on the Ky. Bar Exam? Aren't they now attempting to do it through the new Bar Application rather than the 5-minute interview which they have now abolished?

PARTIES TO THE PROCEEDING

Gerald Sparks is the petitioner; the defendants are Tommy Bell, Chairman of the Character and Fitness Committee, Junius Beaver, Jr., Grant Helman, Stuart Lampe, Bill Baird III, Board Members, and Pat Gill the secretary for the Character and Fitness Committee. Defendants are sued individually and collectively.

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No. _____

IN THE

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October Term, 1989

IN RE:
GERALD SPARKS - - - *Plaintiff/Petitioner*

v.

CHARACTER AND FITNESS
COMMITTEE - - - - - *Respondent*

PETITION FOR WRIT OF MANDAMUS AND OR WRIT OF PROHIBITION TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

To All the Respected U.S. Supreme Court Justices:

Please hear this case and take affirmative action! The following are reasons why Petitioner's Writ of Mandamus and Writ of Prohibition should be granted.

In this country every man is supposed to have a fair and equal opportunity. The petitioner found a letter in his folder preventing him from being passed on the Kentucky Bar Exam! That letter was in his folder *before* he took any exam! He had been *blackballed* during a 5-minute interview!

Tommy Bell, the chairman of the Character and Fitness Committee and Junius Beaver, Jr., the man who interviewed the petitioner and dropped the letter in his folder without petitioner's knowledge and before he took any exam should be held liable and ac-

countable for violating petitioner's basic and fundamental constitutional rights namely petitioner's 5th, 6th, 8th and 14th Constitutional Amendment rights. Once the petitioner found the letter in his folder he confronted Tommy Bell.

Tommy Bell the Chairman of the CFC when confronted by the petitioner told the petitioner "We have always intended to take your money for the Bar Exam but we never intended to pass you!"

Petitioner is not a convicted felon; but there are many convicted felons now practicing law in Kentucky and elsewhere. There was no *just cause* for placing a letter in appellant's folder *before* he took any exam!

The case represents a *landmark* case in this country if you allow the petitioner his justice! S. Ct. Docket No. 87-275, you quoted the *Forrester* v. *White* case 484 U.S. ___ (1988), that even Judges have no immunity when they exercise an *administrative* function! If a Judge, Presidential Aid, Oliver North, President Nixon, Vice President Agnew, U.S. Congressman, American Medical Association, do not have immunity from civil liability, how can a *mere lawyer* have Immunity from civil liability? Neither does the Ky. Bar Association or the National Bar Association have any immunity from civil liability!

Evidently the U.S. 6th Circuit has no respect for the U.S. Supreme Court! (The highest Court in this country!) They refused to follow the instructions given to them by the U.S. Supreme Court. By an

8-0 vote they were instructed to follow *Forrester* v. *White,* 484 U.S. —, and did not do so! The very least the 6th Circuit should have remanded the case back to the Lou. Federal Court so Petitioner could have a trial on his damages; or the 6th Circuit could have awarded Petitioner his damages under federal rule 11 for a willful, wanton, and malicious act on the part of the Respondents.

The 6th circuit wrote an *unpublished* opinion after they were instructed by the U.S. Supreme Court to do something, follow *Forrester* v. *White,* and *they did not follow that mandate.* Evidently, they did not want the public and the U.S. Supreme Court to know what they had done!

A man's mind is a *horrible commodity to waste!* Because petitioner had a letter in his file, before he took any exam, is the only reason appellant hasn't been allowed to practice his profession! The man who placed the letter in Appellant's folder is now selling waterbeds! He is not practicing law!

As a result of the Sparks case, the new Ky. Bar application, to take the Ky. Bar Exam now asks prospective bar applicants to *waive* their right to sue the Character and Fitness Committee! In effect they are asking you to waive your Constitutional rights! Your 5th, 6th, 14th Amendment rights! See the *Wilner* and *Lewis* case cited in this brief! What they were doing with a one-man committee, they are now attempting to do through a bar application! If you do not sign the waiver, they won't pass you! If you do sign the

waiver, they will continue to *Blackball* applicants and you can't do anything about it because you signed the waiver not to sue the Committee. We are asking this Court to declare this bar application unconstitutional because 1) it provides for no due process, and 2) no one can contract away their tortious liability!

Why didn't the U.S. 6th Circuit do what the U.S. Supreme Court told them to do?

1) The case sets a very big and bad precedent in this country; namely, that every man does not have a fair and equal opportunity on professional exams!
2) This type of extreme and outrageous conduct has existed for a long time in this country!
3) Several Judges in Kentucky told the appellant the other side was up at the 6th Circuit trying to buy justice!

Isn't it a shame and a total disgrace that a man who found a letter in his folder *before he took any exam,* indicating he was not to be passed on his bar exam, has not been allowed to win his case because he has shown corruption within the legal system! This is a very *pitiful situation!* The letter was dropped in his folder in 1980; appellant filed suit in 1983, when he found the letter. It is now 1989 and all he has to show for being denied a livelihood of his choice, because a letter was dropped in his file, is a 8-0 vote by this Court; See 87-275.

Even though this case sets a very big, and very bad example in this country, *right is right and wrong*

is wrong; the hard core evidence, the letter in a man's file, *before he takes any exam,* should speak for itself! The fact that the system is now attempting to cover up, and even writes a new rule on the bar application, asking that prospective bar members not to sue the Character and Fitness Committee should speak for itself! No one is above the law!

(The fact that the system is now attempting to cover up by writing new Ky. Supreme Court rules, and now asking prospective bar members to waive their basic and fundamental constitutional rights, and their right to file a tortious liability suit against the Character and Fitness Committee, should speak for itself.)

How would any member of this respected court feel if some one *blackballed* them or a member of their family on their bar exam after expanding many hours of hard work and study to become a competent qualified lawyer.

When a man works for something he should have it! What Beaver did to the petitioner is the highest form of *economic discrimination.* Petitioner worked hard for his education, and does not want to be denied that right to use knowledge that he has acquired. In this country, we should never tell people to work hard and get an education so a man might achieve and get ahead in life, if those people *in control* do not intend to allow that person to use his education. The petitioner has put many many hours of hard work and study into his education. To be denied the opportunity to pursue his chosen line of work, because a letter was placed in

his folder before he took any exam, should not only *shock the conscience of every member of this court, it should also have a strong "chilling effect" on every member of the highest court of the United States of America.* Such extreme and outrageous conduct is *not only wrong, it is inherently wrong; and should not be tolerated in this country!*

Please don't be afraid of this case because of the big implications that it has, and because it shows corruption within our legal system as to how we admit members to the Kentucky Bar. The implications are how many other people have they done this to, and in how many other professions does this extreme and outrageous conduct exist, and for how long has this extreme and outrageous practice existed?

The petitioner has always believed in our system of Justice but if this court does not allow him to win, because his case shows corruption within the legal system, then this is "one good American" who has lost all faith and confidence in our Judicial system! Again I will tell you that right is right and wrong is wrong and the 6th Circuit has absolutely no legal justification for what they did! You have to ask yourself, why was the petitioner able to find the letter in his file *that was placed in his folder before he took any exam in 1980.* The answer in my opinion, is that GOD wanted the petitioner to find the letter, so hopefully a court with some GUTS would put an end or at least try to put an end to this extreme and outrageous conduct!

Yes, this case shows corruption within the legal system when it comes to admitting people to the Kentucky Bar, but please remember NO MAN IS ABOVE THE LAW! Please allow this petitioner his justice and his day in court. The U.S. 6th Circuit has *no legal justification* for not following the instructions and mandate set forth by the U.S. Supreme Court. See U.S. Supreme Court Docket No. 87-275, nor was there any *legal justification* for the U.S. 6th Circuit not to grant petitioner's writ of mandamus. You can file a Writ of Mandamus at any time so long as it pertains to the original action.

This is a landmark case in this country, and *if a landmark decision is going to be made in this case, the U.S. 6th Circuit wants the U.S. Supreme Court to do it!* The U.S. 6th Circuit is either afraid to do it, because it makes our system look corrupt, or they have been paid off to protect a corrupt system.

Please allow every man in this country to have a fair and equal opportunity of being admitted to the Kentucky Bar, and don't protect a corrupt system when it comes to admitting applicants to practice law in Kentucky! The 1989 Kentucky Bar application, which is *an attached exhibit*, indicates that the people that administer the Kentucky Bar Exam, still want to administer a corrupt bar exam and still want to continue to blackball and control prospective bar members. Please don't allow this extreme outrageous conduct to continue!

OPINION BELOW

The opinion of the 6th Circuit is cited as *Sparks* v. *Character & Fitness Committee,* — Southwestern 2d — (Ky. 1987). 108 S. Ct. 538 (1988).

JURISDICTION

The judgment of the 6th Circuit, Federal Court, was entered on 10-18-88 and on 6-8-89. This Petition for Writ of Mandamus to the Supreme Court, is filed herein within (90) days of the judgment below. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3) and *United States* v. *Mendenhall,* 446 U.S. 544, 64 L. Ed. 2d 497, 100 S. Ct. 1870 (1980).

CONSTITUTIONAL PROVISIONS INVOLVED

The *5th, 6th, 8th and 14th amendments.* Namely, the right of a bar applicant to be entitled to (A) Notice of a Due Process Hearing, and (B) To have a Due Process Hearing.

It is certainly cruel and unusual punishment under the 8th amendment to allow a man to study and prepare for the Kentucky Bar Exam four times, take his money for the exam, and know from day one he would never be passed on the exam!

The 6th amendment right of confrontation was never offered to the Petitioner.

STATEMENT OF THE CASE

Appellant filed suit in Federal Court in Louisville, Kentucky. Appellees Motion for Summary Judgment

was granted; Appellant appealed to the 6th Circuit; during oral argument the three-judge panel told the Appellees, "You boys have no defense! Are you better than U.S. Congressmen? They have no immunity from civil liability; Are you better than the AMA (American Medical Association)?" The Federal Court told them the AMA has no immunity from civil liability. The Court said, "if you have a secretary, would she have immunity from civil liability?" The Court said the answer is "no". The only question the Federal Court asked the Petitioner is "did you have a due process hearing." The answer was, "no, I did not." The Federal Court stated one thing in open court and went behind closed doors one year later and gave the Character and Fitness Committee (CFC) immunity from civil liability. Now the Petitioner appears before this respected Court and asks this Court to:

A) Grant his Writ of Mandamus and Writ of Prohibition

B) Waive him into the Kentucky Bar

C) Award his $1,000,000 in damages for violating his civil rights

D) Declare the New 1989 Ky. Bar Application Unconstitutional

STATEMENT OF FACTS

This is a case of *first impression* before this respected Court. When this Court applies the law to the facts, this case should represent a *landmark* decision in this country.

For a brief summation of the facts. From day one, 1-28-80, the day of Appellant's CFC interview, the Appellant was blackballed by the CFC interviewer, Junius Beaver, Jr., after a five-minute interview. Beaver arbitrarily and capriciously sent a letter to the Kentucky Board of Bar Examiners blackballing Appellant based on information that was supplied to Beaver by the Petitioner. The letter was then placed in applicant's folder *preventing him* from ever being passed on the Kentucky Bar Exam. Interviewing prospective bar members in the past have been a mere formality and, at best, represents an *administrative* function. Today, 30 states have abolished this procedure because it serves no useful purpose.

The Petitioner never received any notice of a hearing, nor was any due process hearing afforded to the Petitioner. The Kentucky Board of Bar Examiners took Petitioner's money four times for the bar exam, *knowing* that because of a letter placed in his file, they never intended to pass him. This Petitioner was in fact blackballed by his CFC interviewer and was never given a fair and equal opportunity of being passed. The people that administer the Ky. Bar Exam, are under a duty, the run a fair and impartial exam!

The CFC willfully, wantonly, maliciously and intentionally violated the Petitioner's basic and fundamental Constitutional rights. Petitioner was never provided with a copy of the above letter and it was *never intended for the Petitioner to find the letter in his folder.*

The Kentucky Supreme Court rule in existence when the Petitioner sued the Appellees was Rule 2.060 entitled, *Committee's Decision as to Eligibility.* That rule says the decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this state shall be *final* unless, on motion of the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court, upon review of the record, overrules such decision.

Mr. Beaver, Jr. was the Petitioner's Character and Fitness Committee. He never gave the Petitioner ANY NOTICE OF A HEARING, NOR DID HE PROVIDE HIM WITH A DUE PROCESS HEARING. He *intentionally* wrote a letter and placed it in Appellant's folder preventing him from ever being passed on the Kentucky Bar Exam. Not only did the Petitioner find the letter in his folder that said, "*Do not pass,*" when you read it in conjunction with the Kentucky Supreme Court rule in existence at the time the letter was written, he also saw "*Do not pass*" written on the outside of his folder!

After the Petitioner sued the appellees, a new Kentucky Supreme Court rule (3.160(40)) was written in an attempt to obtain immunity from civil liability. **Writing a new rule is an admission by a party opponent that they didn't believe they had immunity in the first place! The new Kentucky Supreme Court rule 3.160(4) which reads as follows:**

> "Neither the Kentucky Bar Association nor its officers, agents, delegates or members shall be liable to any member of the bar *nor to any other person charged or investigated by said association,* its officers, agents or delegates, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial."

The new rule is unconstitutional because it provides for no due process.

If the Petitioner was the first man they ever blackballed, why would they go to all the time, trouble and expense of writing a new Kentucky Supreme Court rule?

Please consider these additional facts. Tommy Bell, the Chairman of the Character and Fitness Committee, told the Petitioner after the Petitioner found the letter in his file some three years after the letter was written, "we always intended to take your money for the Bar Exam, but we never intended to pass you!" Why would Mr. Bell make such a statement. He was arrogant and he thought he was untouchable! He thought he was above the law! He gave the University of Kentucky $100,000 for 12 years as a gift. He thought what could a "little man," trying to be admitted to the Bar, do to him!

Consider these additional facts. Bar examiner, Stuart Lampe, told the Petitioner, after the Petitioner requested to see his exam paper "what is your exam number", the Appellant told him, then the bar examiner voluntarily said, "You passed my section," and

indicated he had the Petitioner's paper in one stack with all the other passing papers, and his non-passing papers in a different location. When the Appellant asked why he only received 73 when 75 was passing since he had passed Lampe's section there was absolute dead silence; the bar examiner *knew the Petitioner's name,* but he did not *know his face* when he came into the Bar Examiner's office *unannounced.* It was an old bar exam question the Petitioner had in bar review course and he knew the answer like he knew the back of his hand.

Please consider this additional fact. There was an article that appeared in the Louisville Courier Journal in 1984 whereby the people that administer the Kentucky Bar Exam actually came out and admitted that if you have a sponsor or mentor when you take the Kentucky Bar Exam, you have a much greater chance of being passed; they also said *you must pass the CFC* before you can be admitted to the bar. This admission is discriminatory on its face. **This would enable the CFC to maintain a private club if they wanted. Like any agency, the CFC should be submitted to some kind of checks and balances system.**

Over 30 states have now abolished Character and Fitness Committees because they serve *no useful purpose.* It does allow the one man during a five-minute interview to look at an applicant, and if he doesn't fit the physical image he wants a letter is placed in an applicant's folder preventing him from ever being passed. The five-minute interview was the first time

Beaver had ever met the Petitioner. Not only is it wrong, it is *inherently wrong* to place a letter in Petitioner's folder and not provide him with any due process. In this country every man is supposed to have a fair and equal opportunity of passing a professional exam. The very foundation of the country is that every man has a fair and equal opportunity.

The Petitioner has no criminal record; but he can show you numerous convicted felons practicing law in Kentucky and elsewhere.

LAW AND ARGUMENT

Supreme Court Case Law, the *Wilner* v. *Character & Fitness Case* at 373 U.S. 96 (1963) and the *Lewis* v. *Supreme Court of Nevada,* 490 F. Supp. 1174, are crystal clear; they hold that a prospective bar applicant must have A) *notice of a hearing,* B) *a due process hearing* so he can be confronted and explain away anything that the CFC thinks they have against the man. No Notice And No Due Process Hearing Was Ever Granted In The Petitioner's Case. Beaver arbitrarily and capriciously placed a letter in the Petitioner's folder preventing him From Ever being passed on the Kentucky Bar Exam.

When an applicant's money is taken for a professional exam, he must be given a *fair and equal opportunity* of being passed! To allow the CFC immunity from civil liability would put them *above the law* and prevent them from being subject to any type of checks and balance system. Certainly they have *no immunity*

when they violate a bar applicant's basic and fundamental civil rights! To grant civil immunity to a man who merely exercises an *administrative* function by interviewing prospective bar members would circumvent the Law and allow the CFC to practice *discrimination legally.* Even Chief Justice Robert Stephens of the Kentucky Supreme Court believes the CFC should not have immunity. See *City of London* v. *Gas Services Co.,* 687 S.W. 2d 144. He states, if anyone violates another man's civil rights, they should be made to pay for violating those rights."

No man in this country is supposed to be above the law. The one man CFC has no power to hear cases, render written opinions, conduct trials, set bail, set bond, or impose sentencing. He only *interviews* prospective bar members and, therefore, he has no judicial immunity. Interviewing prospective bar members is purely an *administrative function.*

A professional exam is supposed to be based *upon merit* and not on who you know or whether or not a letter has been placed in your file.

What gives one man the right, power and authority to place a letter in a man's folder without his basic and fundamental due process rights being granted? Beaver, Jr. *clearly abused* his discretion when he placed a letter in applicant's folder, blackballing the Petitioner. This case should set a very big precedent in this country!

The Petitioner asks that this case not become a *political decision* as he has worked very hard for his

education. A man's mind is a horrible commodity to waste! This case does in fact show corruption existing within the administration of the Kentucky Bar Exam. Beaver has denied Petitioner access to his chosen profession. How many other people have been treated in this manner and in how many other professions does this extreme and outrageous conduct exist?

Please allow this case to set a precedent for those people that administer professional exams. They should be fair to *all* people, or be prepared to pay a price for violating an individual's basic and fundamental constitutional rights!

See Forrester v. *White,* 484 U.S. ___, where a *Judge has no immunity* from civil liability when he fires a black female probation officer and she sues the Judge based upon sex discrimination and the Judge claims he is immune from civil liability. The Court held that the JUDGE HAS NO IMMUNITY from civil liability. If a Judge who is exercising purely an *administrative* function has no immunity from civil liability how can a *mere lawyer* have immunity from civil liability? Beaver, Jr., the man that placed the letter in Spark's folder or file, before he took any exam, how can this man have immunity from civil liability when he is exercising purely an administrative function when he interviews prospective Bar Applicants? If a Judge doesn't have immunity from civil liability when he exercises an administrative function, how can a *mere lawyer* have immunity from civil liability?

Petitioner is seeking his Writ of Mandamus and Writ of Prohibition against all the judges located at the U.S. Sixth Circuit. The reason relief is not available in any other court is that this case is a landmark case in this country, and the U.S. Supreme Court makes new law. The U.S. 6th Circuit refused to do what the U.S. Supreme Court previously told them to do. See 87-275 U.S. Supreme Court docket No. It appears evident that the U.S. Sixth Circuit holds little or no respect for the directives of the U.S. Supreme Court.

The Writ of Mandamus will be in aid of the court appellate jurisdiction in that there are present exceptional circumstances warranting the exercise of the court's discretionary powers, and that adequate remedy cannot be had in any other form or from any other court.

Defendants have no immunity for placing a letter in a bar applicants folder *before* he has taken any bar exam.

CONCLUSION

For the reasons set out herein, this Honorable Court should and ought to issue its Writ of Mandamus to review the judgment and opinion of the 6th Circuit concerned herein.

In summation the petitioner is asking this respected Court to: A) Grant this Writ of Mandamus and Prohibition; B) Declare the 1989 Kentucky Bar Application Unconstitutional; C) Waive the petitioner into the Kentucky Bar; and D) Award him his damages under Federal Rule 11 in the amount of $1,000,000 compensatory and punitive damages for violating his civil rights and for conducting corrupt Bar Exams!

In the opinion of the petitioner, the circumventive reasoning of the 6th Circuit amounts to just so much mumbo-jumbo. When you weigh all the evidence and look at the "totality of all the circumstances," you will clearly see they never intended to pass the Petitioner. As of this date, they are still blackballing applicants on the Kentucky Bar Exam. The new 1989 Ky. Bar Exam proves it and represents an admission by a party opponent!

Respectfully Submitted,

GERALD M. SPARKS
113 W. Southern Heights
Louisville, Kentucky 40214
Phone: (502) 368-1435
582-1347

Counsel of Record

VERIFICATION

I, Gerald M. Sparks, hoping to be a member of the Bar of Kentucky and the person of record for Appellant, in the above entitled matter.

I have read the foregoing petition and know the contents thereof.

I declare under penalty of perjury under the laws of Kentucky that the foregoing is true and correct. Executed on ....., 1989 at Louisville, Kentucky.

GERALD M. SPARKS

CERTIFICATE OF SERVICE

I, Gerald M. Sparks, hereby certify that, on the ...., 1989, I served 3 copies of the foregoing petition by personally placing same in a sealed envelope first class postage therein fully prepaid in a United States Post Office Mail box in Louisville, Kentucky, to each of the parties thereto, as follows:

1. To the United States Supreme Court, office of the Clerk, Washington, D.C. 20543, enclosing established filing fee; and

2. On appellees, through their counsel of record, John Valentine, 1200 One Riverfront Plaza, Louisville, Kentucky 40202 (3 copies given).

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

GERALD M. SPARKS

COUNTY OF JEFFERSON
STATE OF KENTUCKY

On ....., 1989, before me the undersigned, a Notary Public in and for said state, personally appeared Gerald M. Sparks, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Notary Public for said County
and State

APPENDIX

No. 89-5266

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

In Re:

GERALD SPARKS - - - - - - - *Petitioner*

ORDER—Filed June 8, 1989

BEFORE: WELLFORD and GUY, Circuit Judges; and PECK, Senior Circuit Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case, Accordingly, the petition is denied.

Entered by Order of the Court

(s) Leonard Green
Leonard Green, Clerk

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 89-5266

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

In Re:

GERALD SPARKS - - - - - - - *Petitioner*

ORDER—Filed April 26, 1989

BEFORE: WELLFORD and GUY, Circuit Judges; and PECK, Senior Circuit Judge.

The petitioner seeks a writ of mandamus which would vacate a decision of this Court and award the petitioner $820,000 in damages in a civil rights action. In the alternative, he asks that his prior action be remanded to the district court for trial and that he be "waived" into the Kentucky Bar.

The petitioner filed a civil rights action in 1985 asserting the denial of due process and equal protection in the denial of his admission to the Kentucky Bar. The district court dismissed the action. On appeal, this Court affirmed the dismissal. *Sparks* v. *Kentucky Character and Fitness Committee,* 818 F. 2d 541 (6th Cir. 1987). On petition for writ of certiorari, the United States Supreme Court remanded the case for reconsideration in light of an intervening decision. *Forrester* v. *White,* 108 S. Ct. 744 (1988). This Court re-examined the appeal and again affirmed the district court's judgment. *Sparks* v. *Character and Fitness Committee of Kentucky,* 859 F. 2d 428 (6th Cir. 1988). The

Supreme Court recently denied certiorari. 109 S.Ct. 1120 (1989).

In the present petition, the petitioner asserts this Court "failed to follow" the instructions in the Supreme Court's order of remand and "abused [its] discretion and acted contrary to established law" in again affirming the dismissal of his action.

Pursuant to 28 U.S.C. § 1651(a), courts may issue writs "in aid of their respective jurisdictions. . . ." We conclude we are not empowered under that statute to consider the present petition. Even if the extraordinary relief sought were cognizable under this statute (and we believe it is not), the Supreme Court's denial of certiorari in this action ended the former litigation. The petitioner cannot now seek *via* a mandamus petition that which he failed to obtain in the regular course of litigation and appellate review.

It is therefore ORDERED that the petition for a writ of mandamus is denied.

Entered by Order of the Court

(s) Leonard Green
Clerk

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 85-5629

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS, - - - *Plaintiff-Appellant,*

v.

THE CHARACTER AND FITNESS COMMITTEE OF KENTUCKY; JUNIUS BEAVER, JR.; TOMMY BELL; GRANT HELMAN; BILL BAIRD III; JUDGE STUART LAMPE; ROSEMARY PUCKETT; PAT GILL, - - *Defendants-Appellees.*

On Appeal from the United States District Court for the Western District of Kentucky.

Decided and Filed May 11, 1987

Before: ENGEL, KRUPANSKY and RYAN, Circuit Judges.

RYAN, Circuit Judge. Gerald Sparks, appeals *pro se* the district court's dismissal of his complaint against the Kentucky Committee on Character and Fitness, its members, two employees hired by the Committee, one member of the Board of Bar Examiners, and the Chief Justice of the Kentucky Supreme Court. The district court held that the defendants were entitled to absolute judicial, or quasi-judicial, immunity from liability in appellant's 42 U.S.C. § 1983 suit requesting monetary damages. We affirm.

I

On March 1, 1985, Sparks filed a complaint in district court alleging § 1983 violation of his procedural and substantive due process rights, his equal protection rights, and his rights under the eighth amendment of the United States Constitution. He also alleged breach of contract, fraud and deceit.

Specifically, Sparks averred that in 1980, whe he was first a candidate for admission to the Kentucky Bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness, he could not recommend that Sparks take the upcoming Kentucky Bar Examination.

Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times . . . knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

On April 17, 1985, the district court dismissed the action against defendant Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, holding that the Chief Justice was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable for damages. On June 25, 1985, the court dismissed the action against the remaining defendants, finding:

> "The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character

> and Fitness Committee. Their members are appointed by the Supreme Court and the Court must approve the rules and regulations promulgated by those members. *Supreme Court Rules* 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. *Supreme Court Rule* 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. *Supreme Court Rule* 2.060."

The court concluded that the functions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and these activities are also "clothed with judicial immunity." The court ordered Sparks' complaint dismissed.

II

It is well-established that judges of courts of general jurisdiction are immune from liability for their judicial acts. *Bradley* v. *Fisher,* 80 U.S. (13 Wall.) 335 (1871). Except for acts in the "clear absence" of jurisdiction, judicial immunity is absolute. *Stump* v. *Sparkman,* 435 U.S. 349 (1978); *King* v. *Love,* 766 F. 2d 962 (6th Cir.), *cert. denied,* ___ U.S. ___, 106 S. Ct. 351, 88 L. Ed. 2d 320 (1985).

While the defense of judicial immunity is very broad, it does not protect a judge in the performance of non-judicial acts. *Lynch* v. *Johnson,* 420 F. 2d 818, 820 (6th Cir. 1970). In *Sparkman,* the Supreme Court stated:

> "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity."

435 U.S. at 362. In the present case, the district court determined that the act of evaluating an application for admission to the state bar is judicial in nature.

The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:

> "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."

Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. *Simons* v. *Bellinger,* 643 F. 2d 744, 780 (D.C. Cir. 1980). *Accord Louis* v. *Supreme Court of Nevada,* 490 F. Supp. 1174, 1182 (D. Nev. 1980); *Galahad* v. *Weinshienk,* 555 F. Supp. 1201, 1204 (D. Colo., 1983). Moreover, in the case, the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar." Ky. Const. of 1891, § 116 (1976).

The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

The inherently judicial nature of the governance of the bar admission process is not diminished by the fact that

an overburdened state supreme court delegates the administration of part of its responsibility to authorized persons. The Kentucky Supreme Court retains the ultimate authority to determine who will be admitted to practice law in the State of Kentucky and who will not. Indeed as his *pro se* brief indicates, Sparks was aware that the Kentucky Supreme Court had delegated its responsibilities in these matters to the Committee of Character and Fitness and the Board of Bar Examiners, and he does not question the validity of that delegation. Therefore, his expectations have clearly been satisfied. *Sparkman,* 435 U.S. at 362.

We hold that the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity. Therefore, the district court was correct in dismissing the plaintiff's complaint against the Chief Justice of the Kentucky Supreme Court.

III

The question that next arises is whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activities in this matter. The "nonjudicial" defendants are the Kentucky Committee of Character and Fitness, its members, two employees hired by the Committee, and one member of the Board of Bar Examiners. Absolute judicial immunity "attaches to public officials who perform quasi-judicial duties." *Campbell* v. *Patterson,* 724 F. 2d 41, 43 (6th Cir. 1983), *cert. denied,* 465 U.S. 1107 (1984). It is "a general principle of the highest importance to the proper administration of justice that a judicial officer . . . be free to act upon his own convictions, without apprehension of personal consequences to himself." *Sparkman,* 435 U.S. at 355. Public policy re-

quires "absolute immunity . . . for all persons—governmental or otherwise—who [are] integral parts of the judicial process." *Briscoe* v. *Lahue*, 460 U.S. 325, 335 (1983). In *Campbell*, we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action taken is erroneous.

A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, *Simons*, 643 F. 2d at 780; to a state bar association conducting disciplinary proceedings, *Clark* v. *State of Washington*, 366 F. 2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, *Mills* v. *Killebrew*, 765 F. 2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, *Denman* v. *Leedy*, 479 F. 2d 1097 (6th Cir. 1973); to "friends of the court," *Johnson* v. *Granholm*, 662 F. 2d 449 (6th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982); and to prosecutors engaging in prosecutorial activity, *Imbler* v. *Pachtman*, 424 U.S. 409 (1976).

In the present case, the district court determined that the Committee and Board of Bar Examiners were performing quasi-judicial functions. In reaching this decision, the court relied on *Hoover* v. *Ronwin*, 466 U.S. 558 (1984). In *Hoover*, the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizonia Supreme Court Committee on Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court

noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." *Id.* at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust liability under the doctrine of sovereign immunity announced in *Parker* v. *Brown,* 317 U.S. 341 (1943). *Hoover,* 466 U.S. at 573.

Similarly, in the *Simons* case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges. . . . they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F. 2d at 781. The court held that the members of the committee were entitled to absolute judicial immunity.

In this case, there can be no doubt that the functions of the Committee and Board of Bar Examiners are, at least, quasi-judicial. *Accord Childs* v. *Reynoldson,* 623 F. Supp. 135 (D.C. Iowa 1985). The acts complained of in this case were performed by the defendants in obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on Character and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their

members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to admission. In exceeding these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of the Supreme Court of Kentucky. The actions of the defendants in this case are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent.

The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is performed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform this duty on behalf of the judiciary are entitled to the same judicial immunity as would be enjoyed by judicial officers performing the same act.

The decision of the district court is AFFIRMED.

No. 85-5629

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS, - - - *Plaintiff-Appellant,*

v.

THE CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, et al., - - *Defendants-Appelllees.*

ORDER—Filed June 16, 1987

Before: ENGEL, KRUPANSKY and RYAN, Circuit Judges.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

Entered by Order of the Court

(s) John Hehman
John P. Hehman, Clerk

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 85-5629

GERALD M. SPARKS, - - - *Plaintiff-Appellant,*

v.

THE CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, et al., - - *Defendants-Appelllees.*

JUDGMENT—Filed May 11, 1987

Before: ENGEL, KRUPANSKY and RYAN, Circuit Judges.

ON APPEAL from the United States District Court for the Western District of Kentucky.

THIS CAUSE came on to be herd on the record from the said district court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said district court in this case be and the same is hereby affirmed.

Each party is to bear its own costs on appeal.

Entered by Order of the Court

John P. Hehman, Clerk
(s) John P. Hehman
Clerk

A True Copy.

Attest:

(s) Michelle D. Man
Deputy Clerk

SUPREME COURT OF THE UNITED STATES

No. 87-275

GERALD M. SPARKS, - - - - - - - *Petitioner*

v.

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, et al.

ON WRIT OF CERTIORARI to the United States Court of Appeals for the Sixth Circuit

THIS CAUSE having been submitted on the petition for writ of Certiorari and response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the judgment of the above court in this cause is vacated with costs, and that this cause is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Forrester* v. *White*, 484 U.S. — (1988).

IT IS FURTHER ORDERED that the petitioner, Gerald M. Sparks, recover from Character & Fitness Committee of Kentucky, et al., Two Hundred Dollars ($200.00) for his costs herein expended

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 85-5629

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS, - - - *Plaintiff-Appellant,*

v.

THE CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, et al., - - *Defendants-Appellees.*

On Appeal from the United States District Court for the Western District of Kentucky

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Decided and Filed October 18, 1988

Before: ENGEL, Chief Judge;* KRUPANSKY and RYAN, Circuit Judges.

RYAN, Circuit Judge. This case has been returned to us by the United States Supreme Court which vacated our earlier judgment and directed that we give the matter "further consideration" in light of *Forrester* v. *White,* 484 U.S. __; 98 L. Ed. 2d 757 (1988). We have done so and now hold that the Supreme Court's opinion in *Forrester* is entirely distinguishable from this case and, therefore, does not require that we change our previous decision. *See Sparks* v. *Character & Fitness Comm.*, 818 F. 2d 541 (6th

*The Honorable Albert J. Engel assumed the duties of Chief Judge effective April 1, 1988.

Cir. 1987). Accordingly, we once again affirm the district court's dismissal of plaintiff's complaint.

I.

Plaintiff Sparks filed a complaint in the district court on March 1, 1985 against the chief justice of the Kentucky Supreme Court, a member of the Board of Law Examiners, the Kentucky Character and Fitness Committee, its members, and two of its employees. The complaint alleged violations of various constitutional rights pursuant to 42 U.S.C. § 1983, and asserted several state law claims arising out of the Kentucky Supreme Court's refusal to admit Sparks to membership in the bar of the state of Kentucky.

In our earlier decision, we described the factual background for Sparks' lawsuit as follows:

> Sparks averred that in 1980, when he was first a candidate for admission to the Kentucky bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the [Kentucky Character and Fitness] Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness, he could not recommend that Sparks take the upcoming Kentucky Bar Examination.
>
> Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times . . . knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

818 F. 2d at 542.

The district court dismissed the action against the Honorable Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, on the ground that Chief Justice Stephens was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable in damages. The district court also dismissed the action against the remaining defendants, holding that given the extensive authority exercised over the Board of Bar Examiners and the Character and Fitness Committee by the Kentucky Supreme Court, the actions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and are also "clothed with judicial immunity." The district court therefore dismissed plaintiff's complaint.

On appeal, we affirmed the district court's holding. 818 F. 2d 541 (6th Cir. 1987). After noting, *inter alia*, that the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar," Ky. Const. of 1891, § 116 (1976), we held that "the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity." 818 F. 2d at 543. Our reasoning, in part, was as follows:

> In [*Stump* v.]*Sparkman* [435 U.S. 333, 342 (1978)], the Supreme Court stated:
>
> > "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and

> to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity."
>
> . . . .

The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:

> "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."

Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. *Simons* v. *Bellinger,* 643 F. 2d 774, 780 (D.C. Cir. 1980). *Accord Louis* v. *Supreme Court of Nevada,* 490 F. Supp. 1174, 1182 (D. Nev. 1980); *Galahad* v. *Weinshienk,* 555 F. Supp. 1201, 1204 (D. Colo. 1983).

. . . .

> The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

818 F. 2d at 542-43. We therefore affirmed the district court's dismissal of the plaintiff's complaint against the chief justice of the Kentucky Supreme Court. *Id.* at 543.

We then addressed the question whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activities with regard to plaintiff's application for admission to the Kentucky bar. We explained in some detail that since the "nonjudicial" defendants were acting pursuant to a command imposed upon them by the Kentucky Supreme Court under a provision of the Kentucky Constitution, their actions, at the very least, were quasi-judicial and, that being so, they were entitled to absolute immunity as well. We stated, in part:

> Public policy requires "absolute immunity . . . for all persons—governmental or otherwise—who [are] integral parts of the judicial process." *Briscoe* v. *LaHue*, 460 U.S. 325, 335 (1983)). In *Campbell* [v. *Patterson*, 724 F. 2d 41, 43 (6th Cir. 1983)], we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action taken is erroneous.
>
> A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, *Simons*, 643 F. 2d at 780; to a state bar association conducting disciplinary proceedings, *Clark* v. *State of Washington*, 366 F. 2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, *Mills* v. *Killebrew*, 765 F. 2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, *Denman* v. *Leedy*, 479 F. 2d 1097 (6th Cir. 1973); to "friends of the court," *Johnson* v. *Granholm*, 662 F. 2d 449 (6th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982); and to prosecutors engaging in

prosecutorial activity, *Imbler* v. *Pachtman,* 424 U.S. 409 (1976).

. . . .

In *Hoover* [v. *Ronwin,* 466 U.S. 558 (1984)], the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizona Supreme Court Committee and Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." 466 *Id.* at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust liability under the doctrine of sovereign immunity announced in *Parker* v. *Brown,* 317 U.S. 341 (1943). *Hoover,* 466, U.S. at 573.

Similarly, in the *Simons* case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges. . . . they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F. 2d at 781.

. . . .

> The acts complained of in this case were performed by the defendants in obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on Character and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to the admission. In executing these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of the Supreme Court of Kentucky. The actions of the defendants in this are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent."

Id. at 543-44. We concluded that:

> The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is performed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform those duties on behalf of the judiciary are entitled to the same judicial immunity as

> would be enjoyed by judicial officers performing the same act.

Id. at 544-45. We determined, in other words, that whether a function is a judicial act is determined by the nature of the function, not the office of the actor.

In obedience to the Supreme Court's order, we now reconsider our decision in light of *Forrester*.

II.

In *Forrester*, plaintiff brought a 42 U.S.C. § 1983 action against a state court judge, alleging that she was demoted and later discharged from her position as a probation officer because of her sex, in violation of the Equal Protection Clause of the fourteenth amendment. Under Illinois law, the defendant judge had authority to hire and fire such officers at this discretion. The Supreme Court held that the judge was not protected from liability by absolute judicial immunity because it was "clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester." 98 L. Ed. 2d at 566. In reaching this holding, the Court observed:

> When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges. Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches.

> This Court has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity. The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform. Thus, for example, the informal and *ex parte* nature of a proceeding has not been thought to imply that an act otherwise within a judge's lawful jurisdiction was deprived of its judicial character. *See Stump* v. *Sparkman,* 435 U.S. 349, 363 n.12 (1978). Similarly, acting to disbar an attorney as a sanction for contempt of court, by invoking a power "possessed by all courts which have authority to admit attorneys to practice," does not become less judicial by virtue of an allegation of malice or corruption of motive.

Id. at 565 (*quoting Bradley* v. *Fisher,* 80 U.S. (13 Wall.) 335, 354 (1871)) (emphasis in original).

Thus, the Court in *Forrester* made clear that only "judicial acts" are protected by judicial immunity, and that administrative decisions, although "often crucial to the efficient operation of public institutions," such as the courts, are not protected by absolute immunity. 98 L. Ed. 2d 566. Judicial immunity has not been granted to judges promulgating a code of conduct for attorneys. *Supreme Court of Virginia* v. *Consumers Union of United States, Inc.,* 446 U.S. 719 (1980). Similarly, "judges acting to enforce the bar code would be treated like prosecutors, and then would be amenable to suit for injunctive and declaratory relief." *Id.* at 734-37.

In *Forrester,* Justice O'Connor explained that the analytical key "in attempting to draw the line" between functions for which judicial immunity attaches and those for which it does not is the determination whether the ques-

tioned activities are "truly judicial acts" or "acts that simply happen to have been done by judges." It is the *nature* of the function involved that determines whether an act is "truly" judicial.

The question then is whether an "administrative" decision to hire or fire a court staff employee, action not essentially "judicial," as in *Forrester,* is the functional equivalent of the action of the justices of a state supreme court and their designees in considering the qualifications of an applicant for admission to the bar as in this case.

A careful examination of the *Forrester* and *Consumers Union* cases reveals that the nature of the function involved in determining qualifications for admission to the bar on the one hand, and hiring and firing court staff personnel or enforcing a bar code on the other, are essentially different. The former is a judicial act, the later two are not.

As *Forrester* holds, hiring and firing administrative court staff personnel are functions that merely happen to be performed by some judges. Indeed, they are functions ordinarily performed by nonjudicial employees and, when judges perform them, the actor is different by the nature of the action is not. In many courts, the employmen decisions for court staffing purposes are made by nonjudicial court personnel. There is, as the Court held in *Forrester,* nothing functionally or historically "judicial" about hiring or firing staff members. The same cannot be said for the historically judicial function of determining eligibility for, and the composition of, the state bar.

The language of *Forrester* itself, to say nothing of the very different facts involved there, suggests at least three separate reasons why the actions taken in this case by the Kentucky Supreme Court and its Committee on Character and Fitness are "judicial acts." First, in *Forrester,* the Supreme Court cited the availability of an appeal process as a central reason for granting judicial immunity to judges

for their judicial acts: "Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effect inevitably associated with exposing judges to personal liability." *Forrester,* 98 L. Ed. 2d at 565. Kentucky Supreme Court Rule 2.060 provides applicants to the Kentucky bar with an avenue of appeal on the record from adverse decisions by the Committee on Character and Fitness:

> The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the bar of this state shall be final unless, on motion by the applicant filed within sixty days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon *review of the record* overrules such decision.

(emphasis added).

Supreme Court review on the record of an adverse decision "as to the eligibility of the applicant for admission to the bar," initiated "on motion," describes a process of appellate review of possible "judicial mistakes or wrongs" that has no counterpart in the review of the inherently administrative function of hiring and firing court staff personnel.

Second, the *Forrester* Court quoted, with approval, from the decision in *Bradley* v. *Fisher,* 80 U.S. (13 Wall.) 335 (1871), according immunity to the judicial disbarment of an attorney. The *Bradley* Court observed that acting to disbar an attorney invokes a power "possessed by all courts which have authority to admit attorneys to practice. . . ." 80 U.S. (13 Wall.) at 354. If the action of a court in dis-

barring an attorney is a judicial act for which immunity attaches, in part, because it "invokes a power possessed by all courts which have authority to admit attorneys to practice," it follows inexorably that in exercising the power it has to determine who shall be admitted to practice, the Kentucky Supreme Court performs a judicial act for which immunity attaches. And if, as the *Forrester* Court observed, it is the nature of the function performed which determines the judicial character of an act and not "the character of the agent," it is of no moment that the actor is a designee of the justices of the Kentucky Supreme Court rather than the justices themselves. "Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches," 98 L. Ed. 2d at 565 (emphasis in original).

Finally, the power to determine eligibility for membership in the bar has historically been reposed exclusively in the courts. *See Ex parte Secombe, supra; Simons* v. *Bellinger, supra.* That is not to say that "because a judge acts within the scope of his authority, such . . . decisions are brought within the court's 'jurisdiction' or converted into 'judicial acts'. . . ." *Forrester*, 9 L. Ed. 2d at 567. Some functions performed by courts are so inherently related to the essential functioning of the courts as to be traditionally regarded as judicial acts. Determining the composition of the bar is just such an historic and traditional function. The establishment of criteria for determining the intellectual competence, academic preparedness, and moral fitness of persons who petition the court for the privilege of undertaking the confidential trust of serving the court as one of its professional officers has always been a function confined to the courts themselves. It has been universally thought that the courts are best equipped to understand the requirements for adequate representation of lay persons before the courts and to

identify the qualifications of those who would undertake such representation as the courts' officers. That inherent expertise, and the exercise of the power to apply it in admitting and rejecting candidates to the practice of law, functions rooted in tradition and history, are arguably as fundamental to the sound functioning of the judiciary as is the task of resolving the disputes such officers present.

We return, then, to the analytical key provided by Justice O'Connor in *Forrester* for "drawing the line" between functions for which judicial immunity attaches and those for which it does not: whether the function in question is a "truly judicial act[]" or an "act[] that simply happen[s] to have been done by judges." Whatever argument might be made about the inherently "judicial" character of the function of determining the membership of the bar, it is manifest that whether analyzed from the perspective of judicial precedent, judicial expertise, history and tradition, or the nature of the act itself, determining the composition of the bar is clearly not a function, like hiring and firing administrative, clerical, and other court personnel that is or ever has been performed by anyone in the private sector or in other branches of government, and "simply happen[s] to have been done by judges."

III.

For the foregoing reasons, and those set forth in *Sparks*, *supra*, we hold that the actions taken by the Kentucky Supreme Court and the Committee on Character and Fitness, and its members, were "judicial acts" to which absolute immunity attached. Having carefully reconsidered our previous decision to that effect in light of the Supreme Court's decision in *Forrester*, we conclude that the district court's dismissal of Sparks' complaint must be AFFIRMED.

SUPREME COURT OF THE UNITED STATES

No. 88-846

GERALD M. SPARKS, - - - - - *Petitioner*

v.

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, Et Al.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Sixth Circuit, No. 85-5629.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for the Sixth Circuit.

IT IS ORDERED by this Court that the said petition be, and the same is hereby, denied.

February 21, 1989

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

No. 89-5266

GERALD M. SPARKS, - - - - - - - *Petitioner*

Petition for Writ of Mandamus to All the Honorable United States Supreme Court Justices for the 6th Circuit

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Filed March 9, 1989

Your Petitioner, Gerald Sparks' States as Follows:

You can file a Writ of Mandamus at anytime so long as it pertains to the original action. This writ is not available in any other court, because the U.S. 6th Circuit has refused to take such action and have given *no justifiable legal reason* for not doing so. This case represents a landmark case in this country.

1—In January 1988, this respected court received an order from the UNITED STATES SUPREME COURT to follow *Forrester* v. *White*, 484 U.S. __ (1988), and apply the holding to the Sparks v. Character & Fitness Committee Case. Your Case #85-5629. A copy of the United States Supreme Court order is attached. U.S. Supreme Court docket #87-275. Your case #85-5629 was docket and filed May 11, 1987. The United States Supreme Court order was dated January 19, 1988.

2—After you received the order and mandate from the UNITED STATES SUPREME COURT, THIS court failed to

follow the order and instructions given by the UNITED STATES SUPREME COURT. See your opinion decided and filed October 18, 1988.

3—The three judges involved in not following the instructions set forth by the UNITED STATES SUPREME COURT acted in a arbitrary and capricious manner.

4—On or about *October 18, 1988* the three judge panel clearly abused their discretion and acted contrary to established law. See *Forrester* v. *White,* 484 U.S. — (1988), 108 S. Ct. 538.

5—The action complained of was an abuse of discretion or contrary to established case law, for the following reasons.

A) When a Judge has *no immunity from civil liability,* see *Forrester* v. *White,* 484 U.S. — (1988), how can a *mere* lawyer who places a letter in bar applicants folder *before* applicant takes *any* bar exam, not to pass the petitioner, have immunity from civil liability? Interviewing bar applicants by a *mere* lawyer is nothing more than an *administrative* function. Today, over 30 states have abolished the 5 minute character & fitness interview before you take your bar exam because it (the interview serves no useful purpose.)

B) No notice of a DUE PROCESS HEARING and no DUE PROCESS HEARING was afforded to the petitioner. This is a requirement of UNITED STATES SUPREME COURT LAW. See *Willner* v. *Character and Fitness Committee,* 373 U.S. 96 (1963) and *Louis* v. *Supreme Court of Nevada,* 490 F. Supp. 1174.

C) *After* the Character & Fitness Committee was sued by the petitioner, the Supreme Court of Kentucky wrote a new Supreme Court rule of Kentucky in

their attempt to cover their ass and acquire civil immunity! Why would they write a new supreme court rule if they thought they had immunity from civil liability in the first place?

D) Follow the instructions and mandate set forth by the UNITED STATES SUPREME COURT AND ALLOW THE PETITIONER HIS JUSTICE. Don't be afraid to rule in petitioner's favor simply because this case sets a very bad precedent; namely that every man in this country does not have a *fair and equal opportunity* on PROFESSIONAL EXAMS! This case does prove for the first time in the history of this country that every man *does not have a fair and equal opportunity on professional exams.* We should not protect our legal brothers who administer a corrupt exam. These people should *not be above* the law!

E) The three judge panel failed to consider the fact that the letter was placed in petitioner's folder, preventing him from ever being passed on the Kentucky Bar Exam, *before* petitioner took *any* bar exam!

F) The three judge panel went clearly against the weight of the evidence when they failed to apply the instructions given to them by the UNITED STATES SUPREME COURT, TO THE SPARKS CASE.

G) Interviewing prospective bar members is purely an *administrative FUNCTION* and no civil immunity can attach. A *mere lawyer* Junius Beaver, Jr., blackballed the petitioner when he placed a letter in petitioner's folder, *before* petitioner took *any* exam! Tommy Bell was Chairman of the Character & Fitness Committee and he either knew or should have known what was going on. Take it from the

petitioner that Bell knew what was going on because after the petitioner found the letter in his file, he confronted Bell and petitioner was told by Tommy Bell that "we have always intended to take your money for the Bar Exam, but *we never intended to pass you!*"

H) The United States 6th Circuit never should have discussed Chief Justice Stephens in their opinion as Chief Justice Stephens of the Ky. Supreme Court was neved one of petitioner's defendants. He was ***not*** a party to this litigation.

I) We have *convicted felons* practicing law in Kentucky and in all other states. There are numerous *convicted felons* practicing law in Kentucky; the petitioner has *no criminal record!* Beaver Jr. when he placed a letter in petitioner's folder before he took any exam, clearly abused his discretion as he provided the petitioner with No Due Process.

J) When the administration takes your money for a professional exam, and they already know they are not going to pass you because of a letter they have placed in your file *before* you take any exam, that person is responsible; Beaver Jr., has committed the crime of *theft by deception.* They made the petitioner believe he had a fair and equal opportunity of being passed on the bar exam, when in fact the administrators of the exam, knew they never intended to pass the petitioner! What they were doing with a one man committee, they are now attempting to do with a new bar application.

K) How can a Lawyer have immunity from civil liability when:

a) *U.S. Congressmen* don't have immunity from civil liability! Only exception is when they are *in Congress* exercising the speech and debate clause.

b) *Presidential Aids* (Oliver North case), do not have immunity from civil liability.

c) The *American Medical Association* is not immune from civil liability.

d) The Kentucky Bar Association is not immune from civil liability.

e) Even *Judges* do not have any immunity from civil liability when they exercise an administrative function.

f) Even the Kentucky Supreme Court doesn't believe the Character and Fitness Committee has any immunity from civil liability because they wrote a new Kentucky Supreme Court Rule *after* they were sued by the petitioner, in their attempt to obtain civil immunity. See old Rule 2.060. See new Rule 3.160(4). These Rules appear as Exhibit 3 in attached appendix.

L) As a result of the Sparks case, a *new* Kentucky Bar *Application* has been written. Petitioner requests this Court to declare the 1989 Kentucky Bar Exam Application unconstitutional because:

a) It provides for no due process;

b) They are asking you to waive your right to sue the Character and Fitness Committee. No one can contract away their tortious liability.

c) If you sign the new application for the Kentucky Bar Exam, you are waiving away your constitutional rights. Namely, your *5th*, *6th* and *14th* Amendment Rights. Your right to notice of a

hearing and right to a due process hearing are being violated! No one can compell you to contract away your basic and fundamental constitutional rights.

d) Kentucky, as a result of the Sparks case, no longer has the 1 man Character and Fitness Committee. With this new bar application, they are attempting to continue to blackball applicants!

6—Wherefore, your petitioner prays that a *writ of mandamus* issue out of this court, directed to the said three judge panel, commanding them to grant the following relief. If they refuse to do so then the chief Judge should issue the mandamus and grant the following relief.

A) Vacate the judgment entered by the three judge panel on October 18, 1988 and apply the *Forrester* v. *White* case to the *Sparks* case as instructed to do so by the United States Supreme Court! *Forrester* v. *White*, 484 U.S. __ (1988).

B) Award petitioner $820,000 in compensatory and punitive damages under Federal rule 11 for willfully, wantonly, and maliciously violating petitioner's basic and fundamental constitutional rights namely petitioner's 5th, 6th, 8th, & 14th amendment rights.

C) In the alternative remand the case back to Federal Court in Louisville and allow petitioner a trial on his damages.

D) Waive petitioner into the Kentucky Bar because he has shown corruption within the administration of the Kentucky Bar since 1980. The year the let-

ter was placed in his file preventing him from ever being passed on the Kentucky Bar Exam.

Respectfully Submitted,

(s) Gerald Sparks
Gerald Sparks
Attorney for Petitioner
113 West Southern Heights
Louisville, Ky. 40214

2-22-89
Date

CERTIFICATION

I hereby certify that on or about 2-22-89 a copy of the foregoing was mailed to Jack Ballantine, 1 Riverfront Plaza, Louisville, Ky. 40202, Suite 1500.

by: (s) Gerald Sparks
Gerald Sparks

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

Case No. 89-5266

GERALD SPARKS, - - - - - - - *Petitioner*

FILES THIS *AMENDED PETITION* EN BANC FOR A *WRIT OF MANDAMUS:*

To *All* the Honorable Judges of the United States Court of Appeals for the 6th Circuit:

YOUR PETITIONER, GERALD SPARKS STATES AS FOLLOWS:

1—We have just found out that as a result of the Sparks Case 87-275 U.S. Supreme Court docket #, the people that administer the Kentucky Bar Exam have added a *new paragraph.* We are asking this court to declare Paragraph 3, the new paragraph, *UNCONSTITUTIONAL* FOR THE FOLLIWING REASONS:

A) This authorization and release are UNCONSTITUTIONAL BECAUSE the people who administer the Kentucky Bar Exam are attempting to contract away their tortious liability! No one can contract away their tortious liability! This would be like saying, if my dog bites you, you cannot sue me! Or if I hit you or run into you with my car you cannot sue me! No man *can legally contract away his tortious liability!* If you violate another man's civil rights you are liable for your actions.

B) On this application to take the Kentucky Bar Exam, they are also asking you to *waive your basic and*

fundamental CONSTITUTIONAL RIGHTS: The Wilner Case and the Lewis Case, citations have previously been given, clearly hold that if you think you have a problem with a bar applicant you must give him A) notice of a Due Process hearing, B) A Due Process Hearing to allow him the opportunity to be confronted and explain away any allegations. The *5th, 6th, and 14th* amendment of the U.S. CONSTITUTION IS BEING VIOLATED BY THIS AUTHORIZATION AND RELEASE FORM.

C) What they are saying in paragraph #3 is, if you don't sign this release from civil liability we won't pass you; on the other hand, they are saying even if you do sign it, we can do to you whatever we want to do, and if we do you wrong, you still cannot do anything about it because you have signed this *waiver and release* and agree to hold us harmless even if we do violate your civil rights and whether or not we do it *negligently or intentionally. Hopefully, such extreme and outrageous* conduct should shock the CONSCIENCE OF EVERY JUDGE ON THIS COURT! Every prospective bar member must sign this authorization and release form.

D) If Sparks was the only man they have ever blackballed or the only man the ever intend to blackball, why would they go to all the time and trouble of writing this authorization and release form to be signed by *all* new bar applicants! Evidently the people that administer the Kentucky Bar Exam stil want to be able to *blackball* any and all prospective bar applicant they choose to blackball!

E) The new paragraph does not allow for any *DUE PROCESS!* Can you imagine a person spending

3 years of hard work in law school, spending all that time and money and not be allowed the opportunity to find out what one person may have against him, if in fact their is any justification for intentionally not passing the applicant on the Kentucky Bar Exam! Hopefully, this court will not allow this *extreme and outrageous conduct to continue!*

F) A copy of the authorization and release form are attached to this writ of MANDAMUS. This form applies to all applicants taking the 1989 Kentucky Bar Exam!

G) When the system actually requires prospective bar members to A) waive any tortious liability they have suffered as a result of the actions taken against them by the character & fitness committee or a member thereof, and B) by signing this application they are in effect asking you to waive your basic and fundamental constitutional rights, it is indeed time for a change so this extreme and outrageous conduct will not continue!

H) *No person has the legal right* to release themselves, or discharge, themselves or exonerate themselves from any liability they have caused another person to suffer!

I) Even though lawyers are in the business of suing other people, they evidently do not like to be sued by other people! Lawyers have no immunity from civil liability, and neither do Judges when they exercise immunity from civil liability, and neither do Judges when they exercise *an administrative function.* See *Forrester* v. *White,* 484 U.S. ___. Even the boys that administer the Kentucky Bar Exam, are afraid of being sued, because as of now they no longer interview prospective bar applicants!

Please remember Chief Justice Stephens of the Kentucky Supreme Court was *not* a defendant in this case!

J) The letter in petitioner's folder preventing him from ever being passed on the Kentucky Bar Exam, was in his folder, BEFORE he took any exam!

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed to Jack Ballentine, 1 Riverfront Plaza, Louisville, Ky. 40202, Suite 1500.

1989 KENTUCKY BAR EXAM

_____

Name of Applicant

EXHIBIT 1

NEW 1989 BAR APPLICATION AUTHORIZATION AND RELEASE
1989 Kentucky Bar Exam

To Whom It May Concern:

I, _____ having filed an application with the Kentucky Board of Bar Examiners and fully recognizing the responsibility to the Public, the Bench, and the Bar of the State lodged with the Character and Fitness Committee by the Supreme Court of Kentucky under the Rules of the Supreme Court to determine moral character and fitness for the practice of law permitting only those of high character and integrity to be admitted to the Bar of Kentucky, hereby authorize and request every medical doctor, school official, and every other person, firm, officer, corporation, association, organization or institution having control of any documents, records or other information pertaining to me relevant to my good moral character and fitness to perform the responsibilties of an attorney, to furnish any such documents, records and other information to said Committee, or any of its representatives, and to permit said Committee, or any of its representatives, to inspect and make copies of any such documents, records and other information including but not limited to any and all medical reports, laboratory reports, X-rays, or clinical abstracts which may have been made or prepared pursuant to, or in connection with, any examination(s), consultation(s), test(s), evaluation(s), of the undersigned. I understand that deliberations and records relating to moral character and fitness are confidential as set out in the *Rules of the Supreme Court of Kentucky*, Rule No. 2.120

I hereby authorize all such persons as set out above to answer any inquiries questions, or interrogatories concerning the undersigned which may be submitted to them by

the Kentucky Character and Fitness Committee or its authorized representative, and to appear before said Committee, or its authorized representative and to give full and complete testimony concerning the undersigned, including any information furnished by the undersigned. I hereby relinquish any and all rights to all information in any form submitted to the Character and Fitness Committee, or its authorized representative, and fully understand that I shall not be entitled to have disclosed to me the contents of any of the foregoing.

I hereby release, discharge and exonerate the Kentucky Character and Fitness Committee, or its authorized representative, all such persons as set out above who shall comply in good faith with the authorization and request made herein from any and all liability of every nature and kind growing out of or in anywise pertaining to the furnishing or inspection of such documents, records or any other pertinent information or the investigation made by said Committee on Character and Fitness, or its authorized representative. The undersigned further waives absolutely any privilege he/she may have relevant to his/her good moral character and fitness to perform the responsibilities of an attorney under Kentucky laws.

In witness whereof, I have set my hand and seal this _____ day of _____, 19____.

_____

Signature of Applicant

State of_____

County of_____

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

Notary Public

My Commission Expires

EXHIBIT 2

[LETTERHEAD OF SPECKMAN & BEAVER
ATTORNEYS-AT-LAW]

January 28, 1980

Ms. Rosemary Puckett, Executive Assistant
Kentucky State Board of Bar Examiners
716 Lexington Building
201-215 West Short Street
Lexington, Kentucky 40507

RE: Jerry Marshall Sparks

Dear Ms. Puckett:

I am enclosing herewith the application on the above named individual.

The Character and Fitness Committee may or may not be aware that I personally interview each applicant that I am sent to check.

In interviewing the above applicant the following information was supplied by him as a correction or change on his application.

1. He has been divorced, this took place in Maryland and there is still a piece of real estate to be settled in the divorce action.
2. He has been arrested twice in the State of Maryland. He stated both were probated and were warrants taken out by his wife while the divorce was in progress. He was arrested once for breaking and entering and once for assault.
3. Mr. Sparks stated he has taken the Maryland Bar Exam six (6) times and has not passed it. He has taken the Pennsylvania Bar Exam two (2) times and did not pass it.

He listed a Larry Stevenson of 1301 Vermont Road, Belair, Maryland, as an attorney reference, I attempted to call him but there is no listing for an attorney in Belair by this name.

One of Mr. Sparks character affidavits is signed and then notarized by the same individual.

Jerry Marshall Sparks

In interviewing Mr. Sparks he stated he gave false answers on his application knowingly but did so because he felt the Kentucky Bar would not let him take its exam if he gave truthful answers.

Based on the above problems I can not recommend Mr. Sparks for the taking of the February 1980 Kentucky State Bar Exam.

If you have any questions, please advise.

JVB:mms

Encls

Very truly yours,

(s) Junius V. Beaver, Jr.
Junius V. Beaver, Jr., Attorney

EXHIBIT 3

Rule In Existence When CFC Was Sued:
Rule 2.060—Committee's Decision as to Eligibility --

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this State shall be final unless, on motion by the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon review of the record overrules such decision.

[Amended effective January 1, 1978.]

New Rule Written After CFC Was Sued:

2. SCR 3.160(4)

Paragraph (4) of SCR 3.160 shall read:

"Neither the Kentucky Bar Association nor its officers, agents, delegates or members shall be liable to any member of the bar nor to any other person charged or investigated by said association, its officers, agents or delegates, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial."

3. SCR 3.830

EXHIBIT 4

(An Article from the Courier-Journal Newspaper)

STATE BAR ASSOCIATION SUGGESTS 'MENTORS' FOR LAW STUDENTS

By Andrew Wolfson
Courier-Journal Staff Writer

In the golden days of yore, attorneys-to-be would "read" the law in office apprenticeships, never setting foot inside a law school.

But today, some law students never set foot inside a law *office* until they land a job—or start their own practice—after graduation.

The result, all too often, according to veteran attorneys and judges, is legal bungling that damages clients' cases and sometimes leads to disbarment of young lawyers.

To give law students a better taste of the lawyer's life —and the ethical challanges he faces—Kentucky Bar Association leaders have proposed a novel program to hook up the law students and attorneys.

Under the proposal, all law students in the state would have to sign up with a "mentor," a practicing attorney or judge with whom the student would meet as often as once a month during three years of law school.

The mentor would report on the students "character" to a bar committee that ultimately determines if the candidate is fit to practice law.

To its proponents, the mentor program would give law students an adviser to lean on and a chance to see legal problems "in the flesh."

It would also instill students with the notion that law is a "profession, not a plumber's trade," says Charles Landrum, former state bar association president.

But critics say they fear that young law students will never develop "meaningful relationships" with attorneys charged with judging their character.

"A mentor must be like a psychologist or a priest — a confidential friend, not an evaluator," sair Lee Huddleston, a young Bowling Green attorney and law school instructor.

The mentor program is part of a sweeping set of proposals before the Kentucky Supreme Court that would reshape the way new attorneys are admitted to practice in the state.

The proposals drew both praise and fire at a public hearing yesterday at the Galt House in Louisville. The hearing as held in conjunction with the annual meeting of the state bar association.

The Supreme Court is expected to decide on the proposals within the next month.

Joe Savage, a Lexington trial lawyer who helped draw up the mentor program, likened mentors to "Big Brothers" who would advise and counsel law students. Students could not be required to do legal work for their mentors.

Savage contends that regular evaluations by a mentor would be markedly superior to the perfunctory five-minute interview with a "character and fitness" committee that bar candidates now undergo—a session many lawyers regard as meaningless.

However, some critics yesterday suggested that even *monthly* meetings with law students wouldn't be enough for a mentor to accurately judge a student's character and fitness to practice law.

Lexington attorney Norrie Wake said he had recommended for practice one person he knew on a daily basis. Now he thinks the attorney should be disbarred.

Other attorneys suggested that a compulsory "internship" with lawyers would accomplish far more than the

mentor program. However, Savage said the bar association has already rejected that idea as unworkable.

Under the mentor proposal, all first-year law students intending to practice in Kentucky would be required to sign up for a mentor.

Those who failed to obtain mentors could still apply to be admitted to the bar, but their character and fitness would be subject to intensive investigation and scrutiny.

One retired judge said yesterday that those who fail to sign up for mentors should be "double-checked and double-checked and double-checked."

Under the most far-reaching change discussed yesterday, a new seven-lawyer "Kentucky Admissions Commission" would oversee the process of admitting attorneys to practice in Kentucky.

Admission would still hinge on passing the bar exam —and approval by the fitness committee.

But both bar examiners and members of the character and fitness committee—who are now appointed by the Supreme Court—would be appointed by the Admissions Commission.

Savage said the idea is to "centralize" authority.

Ultimate decisions on admissions to the bar would remain with the Kentucky Supreme Court, which would appoint the Admissions Commission.

According to Savage, the commission would not work to limit the number of attorneys in Kentucky.

But Stuart Lampe, a Louisville attorney and one of three state bar examiners said that is exactly the impression the public will get.

"The public already thinks we're a closed agency," Lampe said. "This will make the public even more unhappy."

Lampe also predicted that the change would open the commission to antitrust suits from students who fail to win admission to the bar.

"The very body that governs the bar will be deciding who becomes a member of it," Lampe said.

Under one thorny proposal, law students who fail the Kentucky bar exam three times would be barred from taking it again.

Kentucky had such a rule, but it was voted out by the state Supreme Court in 1980 after a federal court ruled it was unconstitutional. However, the federal ruling was reversed.

Supporters of the three-times-and-you're-out rule argue that candidates who repeatedly fail the exam are likely to make bad lawyers and bring the bar into public disrepute.

But several young attorneys said the measure would strike hardest against minority law students, many of whom have had trouble passing the exam in Kentucky.

EXHIBIT 5

(An Article from the Courier-Journal Newspaper)
(6-16-85)

FBI, BAR GROUP TRADED INFORMATION, PAPERS SAY

© New York Times News Service

New York — The Federal Bureau of Investigation and a lawyers' organization secretly exchanged information about bar applicants for four decades, according to newly disclosed FBI documents.

Beginning in 1935 and continuing through 1976, the documents show, the FBI furnished the National Conference of Bar Examiners, with details of the organizational ties and political beliefs of people applying to practice law.

The arrangements, which the bureau insisted be kept "strictly confidential" are described in the article to appear tomorrow in The National Law Journal.

The FBI documents were furnished by the government to the National Lawyers Guild, which has filed suit in Federal District Court in New York charging the federal government with harassment.

The bar examiners' group, a private organization based in Chicago that helps state and local bar associations investigate the character and fitness of bar applicants ended the relationship with the FBI in 1976.

According to the documents, the FBI initially sought authorization from the Justice Department before supplying the bar group with any information. In 1954, however, Herbert Brownell, then the attorney general, gave blanket permission for the FBI to supply the information.

The bureau told the bar group about such activities by applicants as criticizing decisions of the U.S. Supreme Court, lending support to labor unions or civil-rights causes, or participating in functions sponsored by the National Lawyers Guild.

According to the confidential memorandums, the files of the National Conference of Bar Examiners were also available to the bureau for many years.

(2)

Supreme Court, U.S.
FILED
OCT 26 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-494

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

IN RE: GERALD SPARKS - - - - Petitioner

Petition for Writ of Mandamus and/or Prohibition to the United States Court of Appeals for the Sixth Circuit

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

JOHN T. BALLANTINE*
WILLIAM A. BARTH
OGDEN, STURGILL & WELCH
1200 One Riverfront Plaza
Louisville, KY 40202
(502) 582--1601

Counsel for Character and Fitness Committee of Kentucky, Junius J. Beaver, Jr., Thomas P. Bell, Grant M. Helman, William J. Baird, III, Stuart E. Lampe, Pat Gill, Respondents

**Counsel of Record*

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QUESTION PRESENTED FOR REVIEW

Can Gerald Sparks ("Sparks") receive additional review of issues on which this Court has already denied certiorari by filing a Petition for Writ of Mandamus and/or Prohibition ("Petition")?*

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*Under Supreme Court Rule 27.2(b), the following are deemed respondents for all purposes of this proceeding: Character and Fitness Committee of Kentucky, Junius J. Beaver, Jr., Thomas P. Bell, Grant M. Helman, William J. Baird, III, Stuart E. Lampe, and Pat Gill. These same respondents were also respondents in the case of *Sparks* v. *Character and Fitness Committee of Kentucky* in which certiorari was granted and the case remanded to the Sixth Circuit for reconsideration (108 S. Ct. 744, Sparks' Appendix 14a) and for which certiorari was later denied by the Court after the Sixth Circuit's reconsideration and affirmance of the dismissal of this case. 109 S. Ct. 1120 (Sparks' Appendix, 28a).

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CITATIONS TO OPINIONS AND JUDGMENTS DELIVERED IN COURTS BELOW

1. *In Re: Gerald Sparks,* No. 89-5266 (6th Cir. June 8, 1989) (Order denying Sparks' petition for a rehearing en banc). (Appendix hereto, 1a).

2. *In Re: Gerald Sparks,* No. 89-5266 (6th Cir. April 26, 1989) (Order denying Petition for Writ of Mandamus). (Petitioner's Appendix, 2a-3a).

3. *Sparks* v. *Character and Fitness Committee of Kentucky,* 859 F. 2d 428 (6th Cir. 1988) (Opinion reconsidering prior decision in light of *Forrester* v. *White,* 484 U.S. 219, (1988) and affirming the district court judgment). (Petitioner's Appendix, 15a-27a).

4. *Sparks* v. *Character and Fitness Committee of Kentucky,* No. 85-5629 (6th Cir. July 16, 1987) (Order denying Sparks' petition for rehearing en banc). (Petitioner's Appendix, 12a).

5. *Sparks* v. *Character and Fitness Committee of Kentucky,* 818 F. 2d 541 (6th Cir. 1987) (Opinion affirming the district court judgment). (Petitioner's Appendix, 4a-11a).

6. *Sparks* v. *Character and Fitness Committee of Kentucky,* No. 85-209 (W.D. Ky. June 25. 1985) (Order and Memorandum Opinion). (Appendix hereto, 2a-4a).

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

Sparks has no grounds for invoking the jurisdiction of this Court. The All Writs Act, 28 U.S.C. § 1651, does not provide an independent basis of jurisdiction. *Baker Perkins, Inc.* v. *Werner & Pfleiderer Corporation,* 710 F. 2d 1561 (Fed. Cir. 1983). The authorities cited by Sparks in his petition, 28 U.S.C. 1257 (3) and the *United States* v. *Mendenhall,* 446 U.S. 554 (1980), are totally inapplicable.

STATUTE

28 U.S.C. §1651

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

No. 89-494

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

IN RE: GERALD SPARKS - - - - *Petitioner*

PETITIONER FOR WRIT OF MANDAMUS AND/OR PROHIBITION
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

STATEMENT OF THE CASE

In 1985, Sparks filed a civil rights action against the Character and Fitness Committee of Kentucky and others in the United States District Court for the Western District of Kentucky ("district court"). The district court dismissed the case. In *Sparks* v. *Character and Fitness Committee of Kentucky,* 818 F. 2d 514 (6th Cir. 1987), the United States Court of Appeals for the Sixth Circuit ("Sixth Circuit") affirmed that dismissal. After Sparks petitioned for a writ of certiorari to this Court, this Court remanded the case to the Sixth Circuit in light of this Court's decision, *Forrester* v. *White,* 484 U.S. 219 (1988), rendered after the Sixth Circuit's decision and opinion. After reconsidering its decision in light of *Forrester,* the Sixth

Circuit again affirmed the decision of the district court. *Sparks* v. *Character and Fitness Committee of Kentucky,* 859 F. 2d 428 (6th Cir. 1988). Sparks then filed a petition for a writ of certiorari with this Court, which was denied. 109 S. Ct. 1120 (1989).

Later, without any notice to these respondents, Sparks filed a petition for writ of mandamus in the Sixth Circuit, asking the Sixth Circuit to *again* review the due process, equal protection, and other issues raised in his original action. Sparks requested *the Sixth Circuit:* to vacate the October 18, 1988 judgment in the case of *Sparks* v. *Character and Fitness Committee of Kentucky,* 859 F. 2d 428 (6th Cir. 1988); to award $820,000 in compensatory and punitive damages; to waive Sparks into the Kentucky Bar; or, in the alternative, to remand the case to the district court for a trial on the issue of damages. The Sixth Circuit denied Sparks' petition for writ of mandamus because "[t]he Petitioner cannot now seek *via* a mandamus petition that which he failed to obtain under the regular course of litigation and appellate review." *In re: Gerald Sparks,* No. 89-5266 (6th Cir. April 26, 1989). Without any notice to these respondents, Sparks sought additional review of his petition for writ of mandamus by filing a petition for rehearing en banc, which was denied by the Sixth Circuit.

Sparks then filed the Petition in this Court.

SUMMARY OF ARGUMENT

Sparks cannot use a petition for writ of mandamus and/or prohibition to seek further review of issues that

have already been finally decided by the Sixth Circuit and for which a petition for certiorari has already been denied by this Court.

ARGUMENT

In his Petition, Sparks raises the same issues of due process and equal protection concerning the denial of his admission to the Kentucky Bar that he raised in the case of *Sparks* v. *Character and Fitness Committee of Kentucky*, 859 F. 2d 428 (6th Cir. 1988). This Court denied certiorari with respect to that case, 109 S. Ct. 1120 (1989). After certiorari was denied, Sparks filed a petition for writ of mandamus with the Sixth Circuit. The Sixth Circuit denied the petition, stating that "[t]he petitioner cannot now seek *via* a mandamus petition that which he failed to obtain in the regular course of litigation and appellate review." *In re: Gerald Sparks*, Case No. 89-5266 (6th Cir. April 26, 1989). Sparks has had his case decided at three levels, the district court, the court of appeals, and this Court. At some point, this litigation must end. Sparks has absolutely no basis for his writ of mandamus and/or prohibition and is merely seeking to reopen a case that has been adversely decided against him.

CONCLUSION

Respondents respectfully request that this Court deny Sparks' petition for writ of mandamus and/or prohibition.

Respectfully submitted,

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APPENDIX

No. 89-5266

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

In Re:

GERALD SPARKS - - - - - - - *Petitioner*

ORDER—Filed June 8, 1989

BEFORE: WELLFORD and GUY, Circuit Judges; and PECK, Senior Circuit Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

Entered by Order of the Court

(s) Leonard Green
Leonard Green, Clerk

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. 85-209

GERALD M. SPARKS, - - - - - - *Plaintiff,*

v.

KENTUCKY CHARACTER AND FITNESS COMMITTEE, Et Al., - - - - - - *Defendant.*

MEMORANDUM OPINION—Entered June 25, 1985

This matter is before the court on the motion to dismiss of defendants Kentucky Character and Fitness Committee, Junius J. Beaver, Jr., Thomas P. Bell, Grant M. Helman, William J. Baird III, Stuart E. Lampe, and Pat Gill. They claim that the court lacks jurisdiction over the action because all of the defendants are protected by judicial immunity, that the complaint fails to state a claim upon which relief can be granted, and that plaintiff's complaint is in violation of Rule 8(a) of the Federal Rules of Civil Procedure and therefore, should be dismissed.

Plaintiff Gerald M. Sparks brings this suit *pro se* and *in forma pauperas* (sic) under 42 U.S.C. § 1983. He alleges that defendants, members and employees of the Kentucky Character and Fitness Committee and the Kentucky Board of Bar Examiners, prevented him from passing the Kentucky Bar examination in violation of his 8th, 5th, and 14th amendment constitutional rights. Specifically, Sparks contends that in 1980 Beaver placed a letter in his bar application file stating that he did not recommend Sparks to be admitted to the bar. Despite that letter, the Board per-

mitted Sparks to take the bar examination four times. He failed three of those examinations. The fourth was never graded. Thus, Sparks argues, the Committee unconstitutionally defrauded him by taking his application and examination fees knowing that it would never recommend him to the bar.

Without ruling on the other two contentions of the defendants, the court finds that the defendants are immune from suit. Thus, it shall grant their motion to dismiss. On April 17, 1985, this court entered an order dismissing plaintiff's claims against Chief Justice Robert F. Stephens. The court found that Stephens was protected by the doctrine of judicial immunity because consideration of an application for admission to the bar is judicial in nature and judges are absolutely immune from liability for damages for their judicial acts. *See Louis* v. *Supreme Court of Nevada*, 490 F. Supp. 1174, 1181 (D. Nev. 1980); *Gallahad* v. *Weinshienk*, 555 F. Supp. 1201 (D. Colo. 1983). It follows from that decision that the same acts performed by an arm of the Kentucky Supreme Court retain their judicial nature as well as their immunity.

In the recent Supreme Court decision *Hoover* v. *Ronwin*, ___ U.S. ___, 104 S. Ct. 1989 (1984), the Court held that actions of the Arizona Supreme Court's Committee on Examinations and Admission and Board of Bar Examiners relating to the grading of the bar examination could not be divorced from the Arizona Supreme Court's exercise of its power. Although that decision dealt with the Committee's liability under the Sherman Act, the Court's discussion of the relationship between the Commiittee and Board, and the state Supreme Court is equally applicable here.

The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character and Fitness Committee. Their members are appointed by the

Supreme Court and the Court must approve the rules and regulations promulgated by those members. *Supreme Court Rules* 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. *Supreme Court Rule* 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. *Supreme Court Rule* 2.060. Just as in the Hoover case, the actions of the Committee and Board which concern consideration of an application for admission to the bar cannot be divorced from the actions of the Supreme Court of Kentucky. Hence, those actions are clothed with judicial immunity

Sparks' allegations concern improper consideration of his application for admission to the bar. For the reasons heretofore set forth those alleged acts are judicial in nature and the defendants are therefore, immune from suit. Accordingly, this court does not have a jurisdiction to hear Spark's claim, and his complaint shall be dismissed.

An order of dismissal it this day entered.

DATED: June 24, 1985

(s) Edw. Johnstone
Edward H. Johnstone, Judge
United States District Court